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No. 03-1212

Supreme Court, U.S.
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In The

Supreme Court of the United States

ROSEMARIE CLAMPITT,

Petitioner,

v.

STARVING STUDENTS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Arkansas Court Of Appeals, Division III

BRIEF IN OPPOSITION FOR RESPONDENT

STEPHEN P. EISENBERG
Counsel of Record
LEAHY, EISENBERG & FRAENKEL, LTD.
Attorneys for Starving Students, Inc.
161 North Clark Street
Suite 1325
Chicago, Illinois 60610
(312) 368-4554

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

WHETHER A COURT VIOLATED A LITIGANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS BY DISMISSING LITIGANT'S CLAIM BECAUSE OF LITIGANT'S FAILURE TO COOPERATE WITH DISCOVERY ORDERS.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Starving Students, Inc. is a privately held California corporation. None of its shares are held by a publicly traded company.

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STATEMENT OF JURISDICTION

The Arkansas Court of Appeals entered its Memorandum Decision on June 4, 2003. Petitioner filed a Petition for Rehearing in the Arkansas Court of Appeals on June 23, 2003, which was denied on July 30, 2003. The Petition for Review was filed by Petitioner in the Arkansas Supreme Court on June 23, 2003, and denied on September 4, 2003. On November 26, 2003, Petitioner filed an application to extend the time to file a Petition for a Writ of Certiorari. Justice Thomas granted Petitioner's request for an extension of time to file until February 1, 2004. Petitioner filed the Petition for Writ of Certiorari on February 2, 2004. On March 17, 2004, Respondent requested an extension of time to file its Brief in Opposition. The Clerk of the Court granted Respondent's request for an extension of time, up to and including April 26, 2004.

The United States Supreme Court has jurisdiction under 28 U.S.C. §1254(1). Petitioner incorrectly states that original jurisdiction of "the Circuit Court" was invoked under 28 U.S.C. §1343. Pet. 2. However, that section only confers original jurisdiction upon *district courts* with respect to certain civil rights and elective franchise.

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend. XIV, § 1

STATEMENT OF THE CASE

This is a case in which Rosemarie Clampitt ("Petitioner") claims to have been unjustly treated by everyone with whom she came in contact during the proceedings below. Petitioner is proceeding *pro se*.

Petitioner contends that she was treated unjustly by her own attorney, who withdrew from representation early on in the case. She claims that she was treated unjustly by Starving Students' ("Respondent") attorney who allegedly "fabricated" the last two lines of an order compelling her to submit to a deposition within a stated two-week period. She claims that she was treated unjustly by the Honorable Victor Hill, Circuit Judge in the Circuit Court of Crittenden County, Arkansas, Civil Division, who refused to revise the "fabricated" order so that it would comport with *Petitioner's* understanding of the court's holding announced in open court. She further claims that she was treated unjustly by the Honorable David Goodson, Judge Hill's successor as a Circuit Judge in the Circuit Court of Crittenden County, Arkansas, Civil Division, who likewise failed to revise the "fabricated" order.

Respondent first filed a notice to take the deposition of Petitioner on August 6, 2001. The deposition was postponed at the Petitioner's request. Respondent issued a second notice to take Petitioner's deposition on October 12, 2001. Petitioner again failed to appear for her deposition. Respondent filed a motion to compel the appearance of Petitioner for her deposition. On December 7, 2001, the Honorable Victor Hill heard arguments on Respondent's motion to compel. At that hearing, Judge Hill ordered, in part, that Petitioner respond to Respondent's outstanding written discovery no later than January 7, 2002, and submit to a deposition within two weeks thereafter.

Respondent's attorney prepared a proposed Order Compelling Discovery that was mailed to Petitioner on December 10, 2001. On December 20, 2001, having received no response from Petitioner, Respondent's attorney mailed the proposed order to Judge Hill for his consideration. The transmittal letter stated, in part, that: *If its [the Order Compelling Discovery's] form meets with your approval, please sign on the line provided for your signature and return the order to me in the self-addressed, stamped envelope that is enclosed for your convenience.* On December 27, 2001, the order was signed by Judge Hill and mailed to Respondent's attorney. On December 31, 2001, the order was filed with the clerk's office. That same day, Petitioner requested that the court revise the order to allow her additional time to appear for her deposition. The Court declined to do so.

After Petitioner refused to supply Respondent's attorney with dates during the two-week period beginning January 7, 2002, upon which it would be convenient for her to appear for a deposition, Respondent's attorney, on January 7, 2002, issued a notice to take the deposition of

Petitioner on January 18, 2002. This was the last weekday within the two-week time frame set forth by the court in its order of December 27, 2001. Petitioner failed to appear for her scheduled deposition on January 18, 2002.

On January 18, 2002, Respondent filed a motion for sanctions against Petitioner for her failure to comply with the court's Order Compelling Discovery. On February 8, 2002, Respondent filed a motion that requested the court to alter the order as written and to enter sanctions against Respondent's attorney. She argued that Respondent's attorney had "fabricated" that portion of the order requiring that she appear for her deposition sometime during the week of January 7 or January 14, 2002.

A hearing on the two motions was held on June 11, 2002. At the hearing, the trial court affirmed its December 27, 2001, order as entered, and dismissed Petitioner's complaint for her failure to appear for her deposition. The court denied Petitioner's motion.

Petitioner filed a Petition for Review in the Arkansas Court of Appeals, Division III, on or about November 27, 2002. She argued that the Circuit Court Judge, Judge Goodson, had created reversible error by considering issues previously decided by Judge Hill. She argued that the only issue was whether the court had intended the last two lines of the December 27, 2001, order to be included, yet Judge Goodson had considered other issues in making his decision. She also argued that her due process rights had been violated. The Arkansas Court of Appeals denied Petitioner's Petition on June 4, 2003.

The Court of Appeals also denied Petitioner's Petition for Rehearing on July 30, 2003. On September 4, 2003, the

Supreme Court of Arkansas denied the Petitioner's Petition for Review.

Petitioner's claim that she has been denied due process throughout this lengthy litigation has no merit. Numerous courts within Arkansas have reviewed the applicable facts and law of this case, and have repeatedly ruled against Petitioner. Though Petitioner may not like the result, she has been treated fairly, with an adequate opportunity to be heard on this matter.

REASONS FOR DENYING THE WRIT

I. PETITIONER MISSTATES LAW AND FACT IN THE PETITION FOR WRIT OF CERTIORARI

In accordance with Supreme Court Rule 15.2, Respondent has identified numerous misstatements of law and fact presented in Petitioner's Petition for Writ of Certiorari which have been noted below.

A. Respondent Memorialized the Ruling and Intent of the Trial Court Judge

Petitioner alleges that she was denied due process because of the Trial Court's December 27, 2001, order required that she appear for her deposition on or before January 18, 2002. The last two lines of the December 27, 2001, order provided, in part, that, "the Court doth find that the Plaintiff [Petitioner] should be, and hereby is, directed to submit to an oral deposition in Crittenden County, Arkansas, sometime during the week of January 7 or January 14, 2002." Petitioner incorrectly states that the order does not reflect what the Judge ruled from the bench. Pet. 4.

Petitioner further incorrectly alleges that the order was "fabricated by an Officer of the Court," Respondent's attorney, "in bad faith." Pet. 5, 6, 7.

Judge Hill stated the following in open court on December 7, 2001: "I am going to give you thirty [days to] compile these documents and give them to the Defendant, . . . and two weeks thereafter to schedule the deposition." Apparently, Respondent interpreted Judge Hill's statement to mean that the Petitioner must be deposed no later than two weeks after the thirty-day limit to respond to written discovery. Respondent's interpretation was the only plausible explanation when considered in the context of the hearing. Just minutes before the court had made the statement at issue, Respondent's counsel stated that, "we would ask that the Plaintiff be given two weeks from today to have the documents to us, and then that she be required to submit to a deposition here in Crittenden County within two weeks thereafter." When these two statements are considered together, it is clear that the Court ordered Petitioner to appear for her deposition within the time prescribed. The court directed Petitioner to appear for her deposition within two weeks after producing documents that had been requested during discovery. The court ordered that such documents be produced no later than January 7, 2002. Accordingly, under the Court's ruling, Petitioner was required to appear for her deposition within two weeks thereafter.

Furthermore, the subject order had no judicial enforcement until it was executed by the judge. The Arkansas Court of Appeals recognized that despite the potential ambiguity created by the Judge's statements in open court, "a ruling from the bench does not become effective until it is reduced to writing, signed by the judge, and filed with

the court clerk." Pet. 15. *Clampitt v. Starving Students, Inc.*, No. CA02-1072 (Ark. Ct. App., June 4, 2003), *citing Standridge v. Standridge,* 298 Ark. 494, 769 S.W.2d 12 (1989), and *Morrell v. Morrell,* 48 Ark. App. 54, 889 S.W.2d 772 (1994).

Petitioner references the Arkansas Court of Appeals' reliance on *Morrell v. Morrell* in her Petition. She correctly states that at issue in *Morrell* was a judge's freedom to alter a decision prior to writing, signing, and filing an order. Pet. 6. However, she incorrectly states that "this is not the situation here." Pet. 6. *Morrell* precisely applies to this case. In our case, a judge had an opportunity to alter the order prior to signing and filing it with the court clerk. Judge Hill had an opportunity to change the wording of the order if it did not comport with the Judge's intended ruling.

Petitioner ignores the fact that the transmittal letter to Judge Hill that accompanied the proposed order requested that the judge review the order. The transmittal letter stated, "if its form meets with your approval, please sign on the line provided for your signature and return the order to me in the self-addressed, stamped envelope that is enclosed for your convenience." Upon receipt of the order, Judge Hill signed the order and returned it to Respondent's counsel, unchanged. Judge Hill did not choose to alter the wording of the order despite the opportunity to do so, as described in *Morrell*. Similarly, the proposed order was sent to Petitioner, but she failed to respond prior to Judge Hill signing and filing it.

After the order was entered, Petitioner requested, on two separate occasions, that the wording of the subject order be changed to comport with her understanding of the

court's ruling. Petitioner's requests were denied. As Petitioner acknowledged in her Petition, both Judge Hill and Judge Goodson refused to change the wording of the order despite her requests.

B. Petitioner Failed to Schedule a Deposition Within the Time Ordered by the Court

Petitioner also falsely claims that she "tried" to schedule her deposition, but her attempts "failed" because Respondent's counsel "refused" to schedule it. Pet. 4. Petitioner made no attempt to schedule her deposition during the two weeks specified by the court. The Arkansas Court of Appeals ruled in its June 4, 2003, decision that even if it accepted Petitioner's interpretation of the written discovery order, "she still did not comply with Judge Hill's discovery order by scheduling her deposition within the designated time." Pet. 15. *Clampitt v. Starving Students, Inc.*, No. CA02-1072 (Ark. Ct. App., June 4, 2003).

Petitioner only attempted to schedule her deposition beyond the time requirements provided by the court. Even Petitioner's late efforts were qualified and inconsistent with the subject order. Petitioner subsequently agreed to appear for her deposition in February 2002, *but only if* Respondent paid for Petitioner's travel expenses, including transportation, lodging, food, and incidentals. It is uncontested, as the Arkansas Court of Appeals stated, that Petitioner failed to comply with the court's order.

C. Petitioner Failed to Cooperate During Discovery

Cooperation between litigants is an essential and basic part of the discovery process. Petitioner incorrectly

states that she "was cooperative with discovery." Pet. 6. The sequence of events during the discovery process betrays Petitioner's position.

On January 4, 2002, after Judge Hill's order had been signed and filed, Respondent's attorney sent an e-mail letter to Petitioner requesting available dates to schedule her deposition. The letter also notified Petitioner that if she failed to respond by noon on January 7, 2002, Respondent would issue a Notice of Deposition to her. On January 7, 2002, Respondent's attorney sent another e-mail letter to Petitioner reminding her that she needed to reply by noon on that day to schedule her deposition. After the deadline had passed, and Petitioner had not responded, a Notice of Deposition was issued by Respondent to schedule Petitioner's deposition for January 18, 2002. Respondent chose the date to allow Petitioner as much time as possible to appear for her deposition, but still comply with the date restrictions established by Judge Hill.

By letter dated January 8, 2002, Respondent reminded Petitioner of the court's order requiring her to appear for a deposition during the weeks of January 7, 2002, or January 14, 2002. Respondent's letter included a copy of Arkansas Civil Procedure Rule 37 and cautioned Petitioner that sanctions would be requested if she failed to appear for her deposition for the third time. Ark. R. Civ. P. Rule 37 (Michie 2003).

On January 14, 2002, Petitioner sent an e-mail letter to Respondent's attorney with accusations of fabricating the order and unethical conduct. On January 18, 2002, Petitioner failed to appear for her scheduled deposition. This represented Petitioner's third failure to appear for her deposition, regardless of a court order requiring that

she appear. These facts show that Petitioner refused to appear for her own deposition and to cooperate during discovery.

II. THE LOWER COURT DID NOT DENY PETITIONER DUE PROCESS OR EQUAL PROTECTION RIGHTS

The lower courts did not violate Petitioner's due process rights. Courts have found that the due process requirement of the Fourteenth Amendment to the United States Constitution can be met without the necessity of oral argument. U.S. CONST. amend. XIV, § 1. Petitioner claims that her rights were violated when Judge Goodson decided Petitioner's Request for Correction of the Order without questioning her on the merits of Petitioner's argument. Pet. 9. A court only must allow a litigant an opportunity to be heard "at a meaningful time and in a meaningful manner" before it may rule on a case. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), *quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Written pleadings can equate to an opportunity to be heard. *Ingram v. City of Pine Bluff, et al.*, No. 03-342, 2003 Ark. LEXIS 652 (Dec. 4, 2003). Since Petitioner had the opportunity to file pleadings, her rights were not violated when Judge Goodson ruled against Petitioner.

A. Petitioner Presents No Facts That the Lower Court Failed to Fully Consider Petitioner's Arguments or Provide Her With an Opportunity to be Heard

Petitioner states that the hearing held before Judge Goodson was "only illusory as a right to be heard," because

the judge chose not to question Respondent's counsel. Pet. 4. Yet, questions from the bench are not required in any proceeding as long as the judge understands the issues presented.

Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which implies that the party to be affected shall have notice and an opportunity to be heard. Petitioner had notice of all proceedings. Likewise, Petitioner had a fair opportunity to persuade the judge to rule on her behalf. Neither Judge Hill nor Judge Goodson agreed with Petitioner's interpretation of the facts and the law. Despite Petitioner's allegations that Judge Goodson did not fully consider her arguments, she presents no law or fact that supports her proposition.

B. The Lower Court Correctly and Adequately Assessed the Trial Court's Use of Its Discretionary Powers

Petitioner mistakenly argues that the Arkansas Court of Appeals incorrectly analyzed the trial court's use of its discretionary powers. Petitioner claims that her due process rights were violated when the lower court analyzed her claim in the context of whether the trial court abused its discretion. Pet. 8. However, Arkansas courts have consistently defined due process violations as an abuse of discretion by the trial court judge. *See, e.g., Watson v. City of Fayetteville*, 322 Ark. 324, 330, 909 S.W.2d 637, 640 (1995); *see also, Flemings v. Littles*, 325 Ark. 367, 372-373, 926 S.W.2d 445, 448 (1996).

The Court of Appeals in our case correctly applied Arkansas law in its analysis of Petitioner's due process violation claims. In its opinion, it stated the following:

> "The imposition of sanctions for the failure to make discovery rests in the trial court's discretion and will not be overturned absent an abuse of that discretion. [citations omitted] A trial court's exercise of discretion in granting severe Rule 37 sanctions for flagrant discovery violations has been upheld several times. [citations omitted] . . . The fact that the sanction imposed by the trial court was severe is of no consequence, as Rule 37 specifically provides for the dismissal of an action where a party fails to provide discovery. *Calandro v. Parkerson*, 333 Ark. 603, 970 S.W.2d 796, 799 (1998)."

Clampitt v. Starving Students, Inc., No. CA02-1072 (Ark. Ct. App., June 4, 2003). Pet. 13-14.

The Court of Appeals applied well-established Arkansas precedent to analyze Petitioner's due process claim. No abuse by the trial court was found and the Petition for Writ of Certiorari lacks any argument against the Court of Appeals' analysis. Petitioner submits a bold statement in alleging a violation of due process, yet falls short of providing a reasoned argument as to how the court's analysis was incorrect.

C. Respondent Acted Appropriately Throughout Discovery and the Lower Court Proceedings

Petitioner included several incorrect statements in her Petition for Writ of Certiorari regarding the conduct of Respondent. For example, Petitioner states that Respondent

made a "mockery of the discovery process with total disrespect for our legal system." Pet. 7-8. Respondent made every effort to comply with the written order entered by Judge Hill. Respondent even tried to assist Petitioner in meeting the demands of the trial judge, but Petitioner refused. Furthermore, there were no "egregious acts" by Respondent. Pet. 8. Petitioner's accusation that Respondent "fabricated" the order is untrue and unsupported by the facts.

CONCLUSION

Respondent, Starving Students, Inc., requests that this Court deny the Petition for a Writ of Certiorari and hold that the discovery orders previously entered, and the procedural steps taken thereafter, comport with the requirements of due process. No due process violation occurred and Petitioner asserts no legitimate argument as to why the lower courts' rulings were incorrect, or unjust.

Respectfully Submitted,

STEPHEN P. EISENBERG
Counsel of Record
LEAHY, EISENBERG, & FRAENKEL, LTD.
Attorneys for Starving Students, Inc.
161 North Clark Street
Suite 1325
Chicago, Illinois 60601
(312) 368-4554